

**Editor's note: Reconsideration denied by order dated Nov. 27, 1973; Appealed -- aff'd, Civ. No. 74-1820 (C.D.Cal. Sept. 30, 1974), dismissed, (9th Cir. May 14, 1976), rehearing denied June 3, 1976; cert. denied, 429 U.S. 940 (Nov. 8, 1976)**

ALBERT P. MICKUNAS

IBLA 73-236

Decided August 22, 1973

Appeal from decision of the California State Office, Bureau of Land Management, rejecting oil and gas lease offer, S 5502.

Affirmed

Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands      Subject to

Since the Mineral Leasing Act gives the Secretary of the Interior discretionary authority to determine whether particular public land shall or shall not be leased for oil and gas and the policy expressed in the Department's regulation prohibits the issuance of oil and gas leases for lands within a mile of the exterior boundaries of a naval petroleum reserve except where certain conditions prevail, the rejection of a lease offer for such lands is proper when the Navy Department has recommended against the leasing of the land and the required conditions of the regulation have not been shown.

APPEARANCES: Richard R. Clements, Esq., of Von Herzen, Catlin, Reinjohn and Clements, Los Angeles, California.

OPINION BY MRS. LEWIS

Albert P. Mickunas has appealed from a decision of the California State Office, Bureau of Land Management, dated December 8, 1972, which rejected his noncompetitive oil and gas lease offer, S 5502, on the ground that the rejected land lies within one mile of Naval Petroleum Reserve No. 1 and the Department of the Navy has recommended that the land should not be leased.

Appellant states that the lands in his offer had been leased continuously from April 1950 through June 1972. He contends that from the extensive drilling of wells in the surrounding area, a vast accumulation of detailed geological information concerning the lithology, structure and nature of occurrence of existing oil and gas reserves has resulted. He argues that it has been conclusively determined that Naval Petroleum Reserve No. 1 could not be drained by producing any oil or gas that may exist under the lands embraced by the offer.

The Department's policy concerning the issuance of oil and gas leases for lands within a mile of the exterior boundaries of a naval petroleum reserve is contained in regulation 43 CFR 3101.1-1(6), which provides:

\* \* \* No oil and gas lease will be issued for land within 1 mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

The Director of the Naval Petroleum and Oil Shale Reserves, Department of the Navy, informed the Bureau of Land Management that the lands in the subject offer are situated within the one-mile buffer zone of Naval Petroleum Reserve No. 1 in Kern County, California, and requested that the lands not be leased for oil and gas, because:

[b]ased on geological information presently available relating to the area under consideration, it is not possible to state that operations under such a lease will not adversely affect the adjacent Naval Petroleum Reserves through drainage from productive oil and gas horizons. Our information indicates the possibility that formations underlying the Petroleum Reserves deposits may contain oil and gas in commercial quantities.

Further, the Navy considers that any action which will increase the likelihood of drainage from Reserves is inconsistent with existing laws requiring the maintenance of the Reserves for production during times of national emergency.

Appellant's contention that these lands had been previously leased by the United States is true. The Department of the Navy, however, since the issuance of the last lease thereon, has stiffened its policy and has recommended that the lands applied for should not be leased. The fact that these lands were formerly leased for oil and gas, in view of the current recommendation of the Department of the Navy, is not in itself sufficient justification for the issuance of a lease to the appellant. Cf. Muriel Musser, 54 L.D. 312 (1933).

As appellant has not persuasively shown the existence of either of the conditions stated in the above cited regulation, which is a prerequisite to the issuance of an oil and gas lease for lands within one mile of the boundaries of a naval petroleum reserve, the rejection of his offer is proper. Adrian R. Boland, A-30773 (September 12, 1968); Robert Kamon, A-30732 (September 13, 1968). The issuance of oil and gas leases is committed to the discretion of the Secretary of the Interior and he may determine whether or not a lease is to be issued on any given tract. Udall v. Tallman, 380 U.S. 1, 4 (1965); Halvor F. Holbeck, A-29104 (January 14, 1963).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Joseph W. Goss, Member

Joan B. Thompson, Member

